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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 18th February 2004

No. 1419–IR(ID)-98/2012-LESI–In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 17th January 2015 in I.D. Case No. 9/2013 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial disputes between the management of M/s Trafic Training Institute, Bhubaneswar and its workman Shri Sarat Ch. Sethi was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 09 OF 2013

Dated the 17th January 2015

Present :

Shri B.C. Rath, O.S.J.S. (Sr. Branch),
Presiding Officer, Industrial Tribunal
Bhubaneswar.

Between :

The management of
M/s Trafic Training Institute,
Bhubaneswar.

.. First Party—Management

And

Its Workman Shri Sarat Ch. Sethi
At/P.O. Balipur, Via. Satasankha,
Dist. Puri

.. Second Party—workman

Appearances :

Shri D.K. Mohanty, Auth. Rep.

.. For the First Party Management

Shri S. C. Sethi

.. Second Party—Workman himself

AWARD

The Government, Odisha, in the Labour and E.S.I. Department, in exercise of powers conferred upon it by sub-section (5) of Section 12 read with Clause(d) of Sub-section(1) of Section 10 of the Industrial Disputes Act, 1947 (for short, the Act), have referred the following dispute for adjudication by this Court vide their letter No. 698— IR (ID)98/2012-LESI, dated the 28th January 2013.

“Whether the action of the Management of M/s Traffic Training Institute, Bhubaneswar in terminating the services of Shri Sarat Ch. Sethi, Temporary Dhobi w.e.f. the 8th April 2009 is legal and/or justified ? If not, what relief Sri Sethi is entitled to ?”

2. The case of the second party workman as narrated in his claim statement, in brief, is that on an application being made by him he was engaged as a Washerman under the first party management with effect from the 7th June 2003 vide office order communicated to him under Memo No.76, dated the 7th June 2003 on a monthly wages of Rs. 4,500, which was subsequently enhanced to Rs.6,000 per month. It is alleged that in order to accomodate another person, namely, Shyam Sundar Sethi in his place, all of a sudden on the 8th April 2009, the first party management refused employment to him despite discharge of satisfactory services by the second party during the period of his employment. It is stated that although the second party is a ‘workman’ and the Institution of the first party is an, ‘industry’ within the meaning of the Act, yet the first party management in gross violation of the provisions contained in Section 25-F and 25-H of the Act has put an end to his job. According to him, such refusal of employment amounts to retrenchment and the same is illegal as well as unjustified for non-compliance of the provisions of the Act. In the premises, the second party workman, on a plea that after his illegal termination he has not been gainfully employed elsewhere, has prayed for his reinsatement in service with full back wages and all consequential service benifits.

3. Refuting the stand taken in the claim statement the first party management has filed its written statement stating therein, *interalia*, that at no point of time the second party workman was appointed/engaged under it as a ‘Dhobi’ and as such no record is available to be produced against the claim of the second party. The specific stand of the first party management with regard to the claim of the second party is that there is no sanctioned post of ‘Dhobi’, ‘Barber’ etc. for the Institute and therefore, the engagement of the second party either temporary or daily wage basis or termination of his service by the first party management does not arise at all. It is stated that he might have worked for the Trainees on their asking but he has never been engaged by the Institution. According to the first party management, the claim of the second party workman is without any basis.

4. Basing on the pleadings of the parties, the following issues have been framed:—

ISSUES

“(1) Whether the action of the management of M/s Traffic Training Institute, Bhubaneswar in terminating the services of Sri Sarat Ch. Sethi, Temporary Dhobi w.e.f. the 8th April 2009 is legal and/or justified ?

(2) If not, what relief Shri Sethi is entitled to ?”

5. In order to substantiate their respective plea, while the second party workman has examined himself as W. W. No.1 and filed documents marked Exts. 1 and 2, on behalf of the first party management Shri Dilip Kumar Mohanty, Inspector of Police has been examined as M.W. No.1, who filed and proved three documents which have been marked Exts. A, B and C.

6. Since both the issues are interlinked to each other, for the sake of convenience they are taken up together for consideration.

It is evident from the claim statement as well as the evidence adduced on his behalf that the second party workman has claimed his employment under the first party management on the basis of appointment order issued to him vide Ext. 1. On a mere perusal of the so called appointment letter, Ext. 1, it is seen that the second party workman was issued an official letter by the Principal, Traffic Training Institute, Bhubaneswar on the 3rd June 2003, whereby order was passed to the effect that he would work as a 'Dhobi' in the Training Institution on payment from individual RC(Recruit Constable) towards " utilisation of his service. The amount to be paid by each RC for utilising his service will be decided from time to time. The contents of the so called appointment letter, Ext. 1 does not seem to be in conformity with the pleadings and evidence advanced by the second party workman wherein it is his claim that he was appointed as a 'Dhobi' on a monthly wage of Rs. 4,500 with effect from the 7th June 2003 and the said monthly wage was enhanced to Rs. 6,000 with effect from the 1st April 2004. There is not a single scrap of paper produced on behalf of the second party workman to show that he was ever paid Rs. 4,500 or Rs. 6,000 per month towards his wage for such appointment. In the above premises, the so called appointment letter, Ext.1 appears, to have been lending support to the stand and evidence advanced by the first party management that the second party workman was asked privately to wash the clothes of the Recruit Trainee Constables on taking payment from them.

7. There is no serious dispute to the claim of the first party management that it is a Government Organisation and judicial notice can be taken to the effect that any recruitment or employment in such organisation is to be guided by the provisions of law, Rules and Circulars relating to appointment in such Government offices. It is emerging from the evidence of the parties that no advertisement or notice was given to the public for such appointment of 'Washerman' in the first party management. The second party has admitted in his evidence that his name was never sponsored by the Employment Exchange. Though he has claimed to have appeared in an oral test, he did not file any call letter to prove such claim. Rather, he has admitted that he has no paper to show that his scale of pay was fixed at Rs. 4,500 and subsequently it was enhanced to Rs. 6,000. That apart, the first party management being a Government Organisation doubt can be entertained on the applicability, of the Act as well as the Institution being covered by the term as defined in Section 2 (j) of the Act. Similarly, for argument sake if the second party workman is accepted to have been in the employment of the first party, doubt can be entertained regarding his status as a 'workman' as defined in Section 2(s) of the Act as he is to be treated as a Government employee on account of he being appointed in a Government Organization even though his recruitment may not be with conformity to the prescribed law, Rules and Circulars framed by the Government from time to time.

8. It is well settled that in order to obtain any relief under the Act, it is the bounden duty of the second party to establish that he was under continuous employment of the first party management for more than 240 days, he is covered by the definition as enumerated in Section 2 (s) of the Act and the first party management is an 'industry' as defined U/s 2(j) of the Act. But, the second party has miserably failed to establish that he was ever given employment as a 'Dhobi' in the first party management on a monthly salary of Rs. 4,500 which was subsequently enhanced to Rs. 6,000 and the fact of applicability of the provisions of the Act in respect of his claim that he is a 'workman' and the first party management is an 'industry'. Having failed to prove the above aspects, the second party is not entitled to any relief in the present proceeding.

The reference is answered accordingly.

Dictated and corrected by me

B. C. RATH

17-1-2015

Presiding Officer
Industrial Tribunal, Bhubaneswar

B. C. RATH

17-1-2015

Presiding Officer
Industrial Tribunal, Bhubaneswar

By order of the Governor

M. NAYAK

Under-Secretary to Government